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February 20, 2013

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208

Dear Ms. Dortch:

On behalf of the Price Cap Industry Forum (PCIF) members, I am filing this notice of a written *ex parte* presentation.<sup>1</sup> On February 15, 2013, on behalf of the PCIF, Maureen Keenan of Verizon sent the attached email to Pam Arluk of the Pricing Policy Division of the Wireline Competition Bureau. The email was a follow up to discussions regarding the 2013 annual tariff filings and the related Tariff Review Plan, which are exempt from the Commission's *ex parte* rules. See 47 C.F.R. § 1.1204(b)(3). The email also addressed a possible future reconsideration order in the above-referenced dockets, and therefore, we are filing this notice for inclusion in these proceedings.

If you have any questions or need additional information, please do not hesitate to contact me. Pursuant to section 1.1206 of the Commission's rules, this letter is being filed electronically with the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Christi Shewman", written in a cursive style.

Christi Shewman

Attachment

cc: Pam Arluk

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<sup>1</sup> PCIF members include AT&T, CenturyLink, Ericsson, FairPoint, Frontier & Verizon. Representatives of each of these members were copied on the email *ex parte* presentation.

## **SHEWMAN, CHRISTI (Legal)**

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**Subject:**

FW: Follow Up issues and food for thought

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**From:** Keenan, Maureen [mailto:maureen.keenan@verizon.com]

**Sent:** Friday, February 15, 2013 3:12 PM

**To:** Pamela Arluk (Pamela.Arluk@fcc.gov)

**Cc:** Buzacott, Alan J; SEN, SAIKAT; Gary Kepley; Dan Benson; 'Clifford Powers'; Londerholm, Christy (Christy.V.Londerholm@CenturyLink.com); Barbara Galardo; kevin Clinefelter; Miller, Chris M

**Subject:** Follow Up issues and food for thought

Pam,

In an effort to resolve many of these issues at hand, in a real time manner, we have put together a short list of open issues that we would like you to consider. We would appreciate your responding to us by our next call, scheduled for February 20<sup>th</sup>, at 10:30 AM. Call in number is 877-792-7011

Below are the four issues. The first two have to do with the last item we raised on our previous call regarding the Residential Rate Ceiling and the Calculation of Maximum Average ARC Rates. The third revisits and formally summarizes the parity issue and the fourth issue addresses the potential for another possible Waiver being needed for those companies eligible for and receiving CAF.

If you have any questions or want other support, please feel free to give me a call or email me.

Thanks,

Maureen

Chairperson Industry PCIF group

**Issue 1: Residential Rate Ceiling defined as \$30 and defined as the higher of the Jan 1, 2012 rate or the rate in effect on Jan 1 in any subsequent year.**

The definition of the Residential Rate Ceiling at Section 51.915 (b) (12) is unclear. It defines the Residential Rate Ceiling as a \$30 per month amount, it also defines the Residential Rate Ceiling as the total of 51.915(b)(11). It cannot be both. It goes on to select the definition as the higher of the rate at January 1, 2012 or any subsequent year. Annually, each company for each exchange will need to total up the Residential Rate Ceiling Components as defined at 51.915 (b) (11). But as explained below, the Order did not seem to consider the possibility that the total of 51.915(b)(11) could be lower in a subsequent year.

Paragraphs 915 and 916 of the Order indicate a Residential Rate Ceiling of \$30 as a level where consumers pay their fair share without overburdening them. The Order indicates that the comparison is to the higher of the Jan 1, 2012 rate or the rate in effect on Jan 1 of the current year not "any subsequent year." The Order does not address a situation where the total Rate Ceiling Component Charges, which is used to compare to the \$30, might actually decrease. In such a case some consumers who might otherwise be charged an ARC in the current year will receive the benefit of a component decrease while those that remain below the \$30 will pay increasing ARC rates even when the actual total could be above consumers who have fallen below. The ICC CAF could also be higher. There are many components that can change in a subsequent year and those changes can increase or decrease.

Although unclear, this rule appears to have the effect of limiting the ARC rates for each subsequent year for any exchange that hits total Rate Ceiling Component Charges of \$30 in a filing year even when that exchange may see a move to below \$30 due to an E911 decrease, for example. In essence, some customers will see a decrease in aggregate rates while others will be required to see higher increases than may have been necessary. Or the ICC CAF will see increases.

Provided below is a chart to illustrate the issue.

Date	1-Jan-12	1-Jan-13	1-Jan-14	1-Jan-15
Exchange 1:				
Total Charges for 51.915(b)(11)	\$30.00	\$29.50	\$28.00	\$31.00
Rate Ceiling (if set at \$30)	\$30.00	\$30.00	\$30.00	\$30.00
MAX ARC Assessment	cannot charge an ARC			
Exchange 2:				
Total Charges for 51.915(b)(11)	\$27.00	\$28.00	\$30.00	\$29.00
Rate Ceiling (if set at \$30)	\$27.00	\$28.00	\$30.00	\$30.00
MAX ARC Assessment	\$0.50	\$1.00	\$0.00	\$0.00

### Issue 2: Calculation of Maximum Average ARC Rates

We discussed the issue regarding companies who had an ARC Eligible Recovery constraint and were forced to tariff ARC rates in the previous year below the maximum allowed by other constraints in each exchange. FCC Staff has indicated that based on paragraph 910 of the order, it is permissible for those companies, for the purposes of calculating the CAF ICC support, to impute the maximum allowable tariff average ARC rates instead of the previous year's maximum allowed rate in each exchange.

Calculating the previous year's maximum average ARC rates involves balancing the RES average rate per line, SLB average rate per line, and the MLB average rate per line such that the sum of each rate type multiplied by the corresponding number of each type of lines approaches, but does not exceed the previous year's Eligible Recovery. In our presentation of this issue to the FCC on Feb 6<sup>th</sup> we presented one method by which suitable maximum average ARC rates might be calculated. However, there are multiple sets of maximum average rates which will meet these criteria and there is no one deterministic way of calculating them.

Since the Order does not specify a method by which the previous year's maximum average ARC rates should be calculated we propose that it be left up to the carrier to determine the method by which the previous year's maximum average ARC rates are calculated as long as the method used is clearly documented and rates are established pursuant to 51.915(e) of the commission's rules..

### Issue 3: Parity Revisited

Since the FCC is considering releasing a 6<sup>th</sup> Recon order in the matter of ICC, Price Cap LECs believes that it would be more efficient if the staff consider and incorporate this "parity issue" in that upcoming release rather than addressing it through a separate Waiver proceeding.

Price Cap LECs have found various references throughout the FCC's November 18, 2011 order (and also in their June 5, 2012 clarification order) that supports bringing intrastate and interstate access rates and structure to be at full parity in Step 2 of ICC transition. Such action is expected to reduce arbitrage, set measurable and predictable goal, and create a smoother transition path. Here are some of the references from the order that supports Price cap LECs position:

- The Commission recognized that the rate disparity "created incentives for arbitrage and pervasive competitive distortions within the industry." (Order, para. 791)
- In the Commission's June 5, 2012 Order (June Order), the Commission clarified that carriers whose intrastate rates were above interstate rates, would have the flexibility to adjust individual intrastate rate elements up or down, so long as in the aggregate, the carrier brought the intrastate rate into parity with interstate rates. (June Order, para. 7)

- The Commission did not require those carriers whose aggregate intrastate rates were already (in some cases significantly) below interstate rates, but who had many individual intrastate rate elements that were higher than their functionally equivalent interstate rate. However, in Step 2 of the transition, those carriers are expected to bring their intrastate rate structures to be at parity with interstate and at the same time reduce all those higher-than-interstate rate elements down to their interstate level. Under this scenario,, these carriers are forced to reduce those rate elements that are higher than interstate, but are prohibited from raising rate elements that are already below interstate. As a result, these carriers would see their aggregate intrastate rate drop further below their aggregate interstate rate, while others who did this in step 1 will reach full parity. This will help to create winners and losers among the carriers and in some cases among study areas within a carrier. This will create new arbitrage opportunities, massive customer confusion, and possible litigation.

#### **Issue 4: Potential Need for Waiver of § 54.304 Administration of Connect America Fund Inter-carrier Compensation Replacement.**

For LECs that are eligible for and elect to receive CAF ICC, the date of March 31<sup>st</sup> set in the section §54.304 (c) (1) for filing data and the date of April 1<sup>st</sup> in §51.915 (f) (71) is completely unrealistic, given the inputs required to create that data. For example, exogenous cost changes flow into Eligible Recovery, to the extent they are not recoverable because of the prohibition on raising PICC and CCL rates; but these quantities cannot be known until the annual filings are completed in mid-June. The filing date June 30<sup>th</sup> for the traditional TRP forms was set to give companies adequate time to collect and process the required data. A filing date of March 31<sup>st</sup> does not take into account what data is available and collected by that point in the Annual Filing process. Companies that are scheduled to receive CAF ICC dollars are quite certain that they cannot meet such a deadline. Further guidance is needed on whether a waiver should be filed or if the FCC will address such timing in their upcoming 6<sup>th</sup> Recon release

(c) For price cap carriers that are eligible and elect, pursuant to § 51.915(f) of this chapter, to receive CAF ICC support, the following provisions govern the filing of data with the Administrator, the Commission, and the relevant state commissions and the payment by the Administrator to those carriers of CAF ICC support amounts that the carrier is eligible to receive pursuant to § 51.915 of this chapter.

(1) A price cap carrier seeking CAF ICC support pursuant to § 51.915 of this chapter shall file data with the Administrator, the Commission, and the relevant state commissions no later than June 30, 2012, for the first year, and no later than March 31, in subsequent years, establishing the amount of the price cap carrier's eligible CAF ICC funding during the upcoming funding period pursuant to § 51.915 of this chapter. The amount shall include any true-ups, pursuant to § 51.915 of this chapter, associated with an earlier funding period.

Thanks,

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Verizon Enterprise Solutions

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